LIBRARY
SUPREME COURT, U. S.
Office-Supreme Court, U.S.
FILED
FEB 23 1966
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

No. 593

KOEHRING COMPANY,
Petitioner,

VS.

HYDE CONSTRUCTION COMPANY, INC.,
Respondent,

AND

KOEHRING COMPANY,
Petitioner,

VS.

VARDAMAN S. DUNN,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

REPLY TO PETITIONER'S BRIEF IN OPPOSITION

DAVID H. SANDERS
205 Denver Building
Tulsa, Oklahoma
Attorney for Vardaman S. Dunn

CHARLES CLARK
1741 Deposit Guaranty Bank Building
Jackson, Mississippi
Attorney for Hyde Construction Company, Inc.

E. L. MERRENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, HArrison 1-3030

BLANK PAGE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

No. 593

KOEHRING COMPANY,
Petitioner,

VS.

HYDE CONSTRUCTION COMPANY, INC.,
Respondent,

AND

KOEHRING COMPANY,
Petitioner,

VS.

VARDAMAN S. DUNN,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

REPLY TO PETITIONER'S BRIEF IN OPPOSITION

Petitioner criticizes Respondents' construction of the concluding sentence of the Tenth Circuit's opinion as misleading. It states that *only* the Respondents, Hyde and

Dunn, who were Appellants in the court below, made "contentions" before the Tenth Circuit. Respondents respectfully submit that such a conclusion of Tenth Circuit's opinion is erroneous and that the error is most simply illustrated by a re-reading of the Tenth Circuit's opinion in its entirety. In the course of such a re-reading, it will be noted that the Tenth Circuit expressly considered and dealt with conditions advanced by Koehring,[1] as well as by Hyde and Dunn.

With deference, we submit, that other important and dispositive questions pend before the Tenth Circuit which are now ripe for that court's decision in the light of the reversal here of its threshold jurisdictional decision. It is certain that no wording in the Tenth Circuit's opinion was addressed to those questions, beyond its express recognition that they had been urged by the parties,[2] Koehring disagrees.

But, quite aside from the fact that the parties here don't agree as to what the wording of the Tenth Circuit's opinion means, the narrow question here and now presented is simply this: Should the Court of Appeals be

---

1. *E. g.* Note such language as "Initially Koehring claims . . .", "Therefore, argues Koehring, . . ." and "This position of Koehring overlooks . . .". *Hyde Construction Company, Inc.* v. *Koehring Company,* (C.A. 10, 1965) 348 F.2d 643, 647; Appendix B, Petition for Writ of Certiorari, pp. 24 and 25.

2. See *Hyde Construction Company, Inc.* v. *Koehring Company,* (C.A. 10, 1965) 348 F.2d 643, 647; Appendix B, Petition for Writ of Certiorari, p. 24, where the court said, "As argued by the parties, this case presents a myriad of complex issues, particularly the jurisdiction of a district court to determine its own jurisdiction and the power of a federal court to enjoin a state court action under exceptions to 28 U.S.C §2283."

allowed to interpret its own opinion, in relation to what may or may not be before it for further review and decision in the light of this court's reversal on the threshold jurisdictional point?

An affirmative answer will result in a remand to the Court of Appeals, followed by that court's resolution of what, if any, questions remain for decision on the present record there on file. A negative answer would result in by-passing the Court of Appeals and a probable duplication of the same appellate process which has brought the case to its present status.

We submit that where, as here, there is no conclusive evidence that the Court of Appeals has exhausted its appellate functions and duties (on the basis of the record before it), this Court has consistently declined to by-pass the Court of Appeals and remand directly to the District Court. The cases cited in our initial brief are all consistent with this practice and Koehring has cited no case to the contrary.

If the Tenth Circuit truly meant to continue past its threshold jurisdictional ruling and rule on the remaining "myriad of complex issues" in a single sentence, it may quickly say so and shortly remand the case to the District Court for final conclusion. On the other hand, if the Tenth Circuit did not intend to rule on those other issues presented, an overall delay in the ultimate disposition of this case would be caused by first requiring further proceedings in the District Court, necessitating a subsequent request for appellate review which could and should be had now. Much in the way of time and expense may be saved by

sending this case back to the Court of Appeals. Nothing of substance can be lost by this course of action.

Respectfully submitted,

DAVID H. SANDERS
205 Denver Building
Tulsa, Oklahoma
Attorney for Vardaman S. Dunn

CHARLES CLARK
1741 Deposit Guaranty Bank Building
Jackson, Mississippi
Attorney for Hyde Construction Company, Inc.

February, 1966

BLANK
PAGE